



REMARKS

1. ***Informalities***

Claim Cancellation. Claims 16 and 18 have been cancelled from the application.

Claim Additions. Claim 23 has been added to the application. The subject matter contained in this new claim is properly supported in the specification. In addition, no new matter is being set forth in new claim 23.

2. ***Claim Rejection -- Obviousness-type Double Patenting***

Claims 1-22 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of United States Patent No. 6,284,266 B1. In response, Applicant is submitting a properly executed terminal disclaimer in compliance with 37 C.F.R. § 1.321(c) to overcome this rejection. Applicant is submitting a copy of an assignment of the present application to Zars, Inc., thus providing the necessary evidence that the cited patent and the present application are commonly owned. As such, Applicant respectfully requests that the double patenting rejection be withdrawn.

3. ***Claim Rejection – 35 U.S.C. § 112***

Claim 6 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Specifically, the Examiner stated that claim 6 recites “said heat generating medium...” without providing proper antecedent basis. In response, Applicant has amended claim 6 to provide the proper support for the subject matter claimed therein.

4. *Claim Rejection -- 35 U.S.C. § 102*

Claims 1-6 and 11-16 stand rejected under 35 U.S.C. § 102(b) as being anticipated by United States Patent No. 4,963,360 to Argaud (hereinafter referred to as "Argaud").

In response, Applicant submits that the claims, as amended, are patentable over Argaud. Amended claim 1 now includes the limitation of "said temperature modification apparatus being capable of heating said skin to a pre-determined temperature range for a pre-determined duration." This limitation was originally in one of the dependent claims (claim 16). Argaud does not teach nor disclose a heating apparatus that heats for a pre-determined temperature range for a pre-determined duration of time. As such, with the inclusion of these limitations in claim 1, Applicant submits that Argaud does not anticipate the claims of the present invention. Applicant would like to further point out that precisely controlling the heating temperature range and duration is very important in the delivery of analgesics, since most of analgesics, if not all, could cause serious side effects if administered in too great a quantity or for too great a time, thus causing the patient to overdose. Moreover, heating the skin to increased temperatures for extended durations could also cause the patient to overdose. Therefore, it is important to be able to control each of these parameters as precisely as possible.

Dependent claims 2-6 and 11-16 place further limitations on what is otherwise argued allowable subject matter. Therefore, Applicant respectfully submits that these claims stand in a condition for allowance.

Based on the foregoing, Applicant respectfully submits that Argaud does not anticipate any of the claims of the present invention. As such, Applicant respectfully requests that the rejection under 35 U.S.C. § 102 be withdrawn.



CONCLUSION

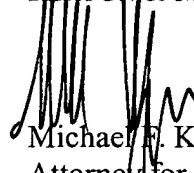
Based on the foregoing, Applicant respectfully submits that the deficiencies in the application have been corrected and that the proposed claims are neither anticipated nor rendered obvious by the prior art references cited by the Examiner. As such, Applicant believes that the claims are now in a condition for allowance, and action to that end is respectfully requested.

If any impediments to the allowance of this application for patent remain after the above amendments and remarks are entered, the Examiner is invited to initiate a telephone conference with the undersigned attorney of record.

DATED this 21 day of May, 2003.

Respectfully submitted,

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#685000 v1 - 02/26/03 Response to Pat OA